IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16-2-2007

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.No.3981 of 2006
W.P.M.P.No.4239, 4240 of 2006

C. Sudharsanan ... Petitioner

Vs.

1. State of Tamil nadu
rep.by its Secretary to Government,
Home Department,
Fort St.George,
Chennai - 600 009.

2. The Director General of Police,
Santhome High Road,
Mylapore,
Chennai - 600 004.

3. The Inspector General of Police,
Armed Police, Kilpauk,
Chennai - 600 010.

4. The Deputy Inspector General of Police,
Armed Police, Kilpauk,
Chennai - 600 010.

5. The Commandant,
Tamil nadu Special Police,
III Battalion,
Veerapuram,
Chennai - 600 055. ... Respondents

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Prayer: Writ petition filed under Article 226 of Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus calling for the records relating to the order dated 31.8.2004 passed by the first respondent in G.O.(2D) No.395 confirming the punishment of reduction of pay by two stages for two years without cumulative effect imposed by the 5th respondent in P.R.No.34/2002 dated 26.9.2002 and quash the same and consequently to direct the respondents 2 to 5 to grant all consequential service and monetary benefits to the petitioner.

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For Petitioner : Mr.M.S.Mohamed Rafi
For Respondents : Mr.P.Subramanian,
Government Advocate

O R D E R

By consent of the learned counsel appearing for the petitioner as well as the learned Government Advocte, the writ petition is taken up for final disposal.

2. Prayer in the writ petition is to quash the order dated 31.8.2004 passed by the first respondent in G.O.(2D) No.395 confirming the order of punishment of reduction of pay by two stages for two years without cumulative effect, imposed by the 5th respondent in P.R.No.34/2002 dated 26.9.2002 and to direct the respondents 2 to 5 to grant all consequential service and monetary benefits to the petitioner.

3. The brief facts necessary for disposal of the writ petition are as follows.

(i) Petitioner was appointed as Police Constable by direct recruitment on 26.12.1985 and was promoted as Lance Nayak in the year 1993 and further promoted as Nayak in the year 1994. Petitioner was further promoted as Havildar in the year 1996 and he was posted as Trainee Instructor in Cuddalore in the year 2002. The Inspector of Police (Chief Drill Inspector), Cuddalore, framed four charges against the petitioner which reads as follows,

"1st Charge:
That the petitioner obtained 5 days leave from 29.3.2002 and did not report duty on 3.4.2002, and reported only on 4.4.2002. That the petitioner after taking leave for a period of 2 days from 14.4.2002 reported to duty only on 17.4.2002 at about 2.00 p.m. instead of 12.00 p.m.
2nd Charge:
That the petitioner tried to receive Rs.50/- each from Trainee Recruits namely Mr.Jothi and Ramadoss.
3rd Charge:
That the petitioner while washing his plate in the dining hall of the water fell on the cook and further while going to take lunch the petitioner did not wear chappal.
4th Charge:
That the petitioner has been frequently requesting the Inspector for grant of leave and on 29.4.2002 that the petitioner sought leave only in order to avoid the inspection by the Deputy Inspector General of Police."

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According to the petitioner he did not commit any act of misconduct as alleged.

(ii) According to the petitioner, insofar as the first charge is concerned, he was on duty in the stores from 29.3.2002 to 1.4.2002 as instructed by the Inspector and on 2.4.2002, he appeared before the Egmore Court in connection with a case and on 3.4.2002, petitioner was not doing well for which he produced medical certificate issued by the Government Hospital and on 4.4.2002 he reported for duty. With regard to the second charge, no documentary or oral evidence was produced to prove the same and during the personal enquiry the trainee recruits namely, RPC No.50 and 55 have stated that the petitioner did not receive nor demand any amount. The third charge is stated to be vague. As regards the 4th charge, petitioner's contention is that he requested for leave from the competent authority and not from the superior officers like the Assistant Commandant or Deputy Commandant and the leave sought was only for appearing before the Egmore Court and the Officer should have either granted or rejected the leave requested for and no charge could be framed.

(iii) On the above charges, an enquiry was conducted and the Enquiry Officer held that the charges were not proved. However, the disciplinary authority in defiance with the Enquiry Officer's report imposed a punishment on 26.9.2002 in P.R.No.34 of 2002 by reducing two increments for a period of two years without cumulative effect.

(iv) Petitioner filed an appeal before the 4th respondent against the order of the 5th respondent. The said appeal was dismissed by the 4th respondent on 30.11.2002 by merely stating that the petitioner has not raised any fresh point in the appeal and further held that the charges against the petitioner were proved. Petitioner filed a review petition before the third respondent, which was also rejected on 18.2.2003 without assigning any reason. The mercy petition filed before the first respondent was also rejected on 27.8.2003. Again the petitioner submitted a representation before the first respondent and the same was also rejected by G.O.2D No.395 dated 31.8.2004.

4. Even though several points were urged in the affidavit filed in support of the writ petition, at the time of argument, the learned counsel appearing for the petitioner submitted that the appellate authority while passing order in the appeal filed by the petitioner, has not complied with the provisions in Rule 15A of the Tamil Nadu Police Subordinate Service Rules and the Appellate Authority merely dismissed the appeal by stating that the petitioner has not raised any fresh poins in his appeal.

5. In view of the said submission, I have perused the order dated 30.11.2002 passed by the appellate authority/4th respondent in the appeal filed by the writ petitioner. After extracting the charges, the 4th respondent passed the following order,

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"3. I have gone through the minute in the light of the appeal petition and the connected records carefully. The delinquent has not raised any fresh points in his appeal. The charge against the delinquent has been clearly proved and I agree with the minute drawing officer in holding the charges as proved. The behaviour of the delinquent in the PRS is highly objectionable and will create a bad influence on the trainees. In fact the punishment is very lenient. There is no room for interference. The appeal is dismissed."

6. Heard the learned Government Advocate appearing for the respondents.

7. Rule 15A of the Tamil Nadu Police Subordinate Service Rules reads as follows,

"15-A (1) Notwithstanding anything contained in these rules-

(i) the State Government; or

(ii) the Head of the Department directly under the State Government in the case of a Government servant serving in a department or office, under the control of such Head of the Department; or

(iii) the appellate authority within six months from the date of the order proposed to be reviewed; or

(iv) any other authority, specified in this behalf by the State Government by a general or special order, and within such time as may be prescribed in such general or special order

may, at any time either on their or its own motion or otherwise, call for the records of any inquiry and review any order made under these rules, after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary and may,-

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set-aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority, directing such authority to make such further inquiry as it may consider proper in the circumstances of the case:

Provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the Government servant concerned has been given a

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reasonale opportunity of making representation. Where it is proposed to impose any of the penalties specified in clauses (d), (e) (3), (h),(i) and (j) of rule 2 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in sub-rule (b) of rule 3 and after giving a reasonable opportunity to the Government servant concerned of showing cause on the evidence adduced during the inquiry and except after consultation with the Tamil Nadu Public Service Commission, where such a consultation is necessary:

Provided further that no power of review shall be exercised by the Head of the Department, unelss-

(i) the authority which made the order in appeal; or

(ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.

(2) No proceeding for review shall be commenced until after,-

(i) the expiry of the period of limitation for an appeal; or

(ii) the disposal of the appeal, where any such appeal has been preferred;

(3) An application for review shall be dealt with in the same manner as if it were an appeal under these rules;

(4) No application for review shall be preferred more than once in respect of the same order:

"Provided that members of the constabulary (Police Constables and Head Constables) shall be eligible to make one representation to the Government against orders of dismissal or removal from service after exhausting the right of appeal";

Provided further that no application for review shall be entertained, if it has not been made within a period of six months from the date of receipt of the order on which such application for review is preferred."

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8. The 4th respondent having exercised the statutory power above referred while dealing with the appeal filed by the petitioner, is bound to follow the said rule. The order passed in the appeal is only a cryptic order, not even considered as to why the disciplinary authority differed with the findings of the enquiry officer and imposed punishment.

9. Therefore, I am satisfied that the appellate authority's order is not in conformity with the statutoty rule. Similar issue was

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considered by the Division Bench of this court in the decision reported in 1983 (2) MLJ 513 (Srinivasan v. Government of Tamil Nadu) and 2004 (3) LW 32 (M.Nagarajan & Others v. The Registrar, High Court & Another).

10. Hence, without expressing any opinion on the merits of the order of the original authority, the order of the appellate authority dated 30.11.2002 and the consequential orders passed subsequently, are set aside. The 4th respondent is directed to consider the appeal filed by the petitioner by following Rule 15A of the Tamil Nadu Police Subordinate Rules and pass revised orders within a period of six weeks from the date of receipt of copy of this order.

The writ petition is ordered in the above terms. No costs. Connected miscellaneous petitions are closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

vr/

To

1. The Secretary to Government, Home Department,
   Fort St.George, Chennai - 600 009.

2. The Director General of Police,
   Santhome High Road, Mylapore, Chennai - 600 004.

3. The Inspector General of Police,
   Armed Police, Kilpauk, Chennai - 600 010.

4. The Deputy Inspector General of Police,
   Armed Police, Kilpauk, Chennai - 600 010.

5. The Commandant, Tamil nadu Special Police,
   III Battalion, Veerapuram, Chennai - 600 055.

1 cc To Mr.H.S.Mohammed Rafi, Advocate, SR.9373.

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RVL 26.02.2007

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